

## **REMARKS**

Applicants wish to thank the Examiner for reviewing the present patent application. Applicants acknowledge and appreciate that the novelty rejections to claims 1, 3 and 9 in view of Koene et al., U.S. Patent No. 4,534,983, and claims 1-4 and 9 in view of Carns et al., EP 0910956 are withdrawn in view of the arguments made on the record.

### **I. Claim Objections**

The Examiner has objected to claims 1-9 in view of the spelling of “characterised” and “fluidised”. In view of the amendments made of record, Applicants submit that the objections to the claims should be withdrawn and rendered moot.

Regarding the previous rejection of claims 4-8 under 35 USC §103 as being unpatentable over Koene et al., U.S. Patent No. 4,534,983 in view of Hampton et al., GB 2239305 and in view of Menzi et al., U.S. Patent No. 6,056,949, Applicants appreciate and acknowledge that the rejection has been withdrawn and rendered moot in view of arguments on the record.

### **II. Rejection Under 35 USC §103**

The Examiner has rejected claims 1-4 and 9 under 35 USC §103 as being unpatentable over Carns et al., EP Patent Application No. 0910956 (hereinafter, ‘956).

In the rejection, the Examiner mentions, in summary, that the ‘956 reference describes a method for making a combined tea product with a mixture of tea leaves and tea solids. The Examiner continues by mentioning that the method described in the

'956 patent coats tea solids onto tea leaves. The Examiner takes the position that the reference further teaches that tea concentrate can be sprayed onto tea leaves wherein the leaves are subjected to a drying step. Since the Examiner concludes that spraying and drying (as disclosed in the '956 reference) can either occur simultaneously or in separate steps, the Examiner believes that the '956 reference teaches the invention set forth in independent claim 1 of the present patent application. Furthermore, the Examiner notes that soluble tea leaves are described in the '956 reference where the same may be mixed with water to produce a resulting mixture that is sprayed over a fluidized bed containing tea leaves. In view of this, the Examiner believes that the reference teaches a combined tea product comprising tea leaves and soluble tea solid where the soluble tea solids may be dissolved in water prior to forming the combined tea product. Finally, the Examiner mentions that the '956 reference describes the claimed amount of tea powder, the final moisture content of the mixture of tea leaves and tea solids, as well as a coating process and infusion times. In view of the above, the Examiner believes that the rejection made under 35 USC §103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention, as set forth in independent claim 1 as amended and presented, is directed to a method for preparing a fabricated leaf tea product comprising the steps of:

- (a) mixing leaf tea with tea solids derived from tea powder to product a mixture;  
and
- (b) simultaneously wetting and drying the mixture to produce the fabricated leaf tea product.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the amount of tea powder mixed with the tea leaf, the moisture content of the fabricated leaf tea product, that the mixing of the leaf tea and tea powder and the simultaneous wetting and drying of the mixture of leaf tea and tea powder occur in a fluidized bed, and that the fabricated leaf tea product can give an infusion under 10-15 seconds with water at a temperature between 80 and 90°C.

In contrast, and as already made of record, the '956 reference is merely directed to a tea bag for ice tea beverages. The '956 reference does not, even remotely, describe a process where tea leaves and tea powder are simultaneously wetted and dried. The '956 reference is merely directed to spraying tea concentrate onto tea leaves. No mixture of tea leaf and tea powder is made wherein the resulting mixture is simultaneously wetted and dried as claimed in the present invention. In fact, the reference describes thermally treating tea leaves then combining the thermally treated leaves with soluble tea solids. No wetting step and no drying step are simultaneously required or suggested. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the '956 reference. Therefore, a *prima facie* case of obviousness has not been established and the rejection made under 35 USC §103 should be withdrawn and rendered moot.

### III. Rejection Under 35 USC §103

The Examiner has rejected claims 5-8 under 35 USC §103 as being unpatentable over Carns et al., EP 0910956 A1 (hereinafter, '956) in view of Menzi, U.S. Patent No. 6,056,949 (hereinafter, '949). In the rejection, the Examiner mentions, in summary, that the '956 reference is being applied to claims 1-4 and 9 as previously discussed. The

Examiner mentions that the '956 reference describes a method for combining tea product with a mixture of tea leaves and tea solids wherein the Examiner acknowledges that the '956 reference fails to specifically describe or suggest any temperatures consistent with those claimed in the present invention.

In an attempt to cure the vast deficiencies of the '956 reference, the Examiner relies on the '949 reference and notes that the reference teaches a process of making granulated flavorings including tea flavors by using a fluidized bed having air temperatures for coating and drying in the range from about 30-80°C. The Examiner further mentions that the '949 reference describes spraying as a method of coating the flavor on to a base material when the temperature of the fluidized bed being used is kept relatively constant so that drying and coating runs in a uniform rate. In view of such a conclusion, the Examiner believes that the rejection to claims 5-8 under 35 USC §103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1, as amended and presented, is directed to a method for preparing a fabricated leaf tea product comprising the steps of:

- (a) mixing leaf tea with tea solids derived from tea powders to produce a mixture;  
and
- (b) simultaneously wetting and drying the mixture to produce the fabricated leaf tea product.

Dependent claim 5 further limits the simultaneous wetting and drying step in that the mixture is wetted by spraying hot water on to the fluidized bed. Claim 6 further limits the spraying of the hot water in that the hot water is supplied at a temperature range from about 30 to about 60°C. Claims 7-8 specifically describe the processing temperatures of the fluidized bed employed.

In contrast, and as already made of record, the '956 reference is directed to a tea bag for ice tea. The tea bag for ice tea comprises tea leaves and dried soluble tea solids that can be immersed in cold water to produce a beverage having a theaflavin content of at least 25% of the theaflavin content of a standard tea beverage. The method for preparing the iced tea bag described in the '956 reference is clear. Specifically, tea leaves alone are treated at a temperature of at least 80°C. The treated tea leaves are then (after being treated at 80°C) combined with tea solids to provide a mixture with about 30 to about 95% by weight tea leaves and with about 5% to about 70% by weight dried, soluble tea solids. The mixture is then packaged in the tea bag. There is no teaching whatsoever in the '956 reference that even remotely suggests the simultaneous wetting and drying of a mixture of tea leaf and tea powder as claimed in the present invention.

The '949 reference does not cure any of the vast deficiencies of the '956 reference since the '949 reference is directed to a process for the preparation of spherical or substantially spherical aromatic and odoriferous granulated material which is free flowing. The process described requires fluidizing a core material in an air fluidized bed by introducing air into a rotor-granulator to cause the material to be fluidized by air and the rotor. Flavorant or odorant emulsion is then sprayed below the surface of the fluidized core material wherein the flavorant or odorant emulsion is granulated in fluidized core material. Column 2 at lines 49-51 merely mentions air

temperatures that are employed to make mechanically stable flavorant and odorant granulates having a narrow particle size distribution. The combination of the '956 reference and the '949 reference does not, even remotely, describe a process where a mixture of tea leaf and tea solids is simultaneously wetted and dried to produce a fabricated leaf tea product. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Therefore, a *prima facie* case of obviousness as required under 35 USC §103 has not been established and the rejection made under the same should be withdrawn and rendered moot.

Applicants submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned at his or her earliest convenience.

Respectfully submitted,



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